83 2068

Supreme Court, U.S.
FILED
MAY 18 1984
ALEXANDER L. STEVAS
CLERK

NO.

in the

Supreme Court

of the

United States

October Term, 1984

DONALD E. GANN
In Propria Persona

Appellees.

v.

SAN JOSE CITY COUNCIL
a Municipal Corporation
and PETER G. STONE, Judge

Appellees.

On Appeal from Superior Court
County of Santa Clara, California

MOTIONS and AFFIDAVIT

DONALD E. GANN
In Propria Persona
459 No. Second St.
San Jose, Calif. 95112
Telephone: (408) 297-7349

BEST AVAILABLE COPY

NO.

in the

Supreme Court

of the

United States

October Term 1984

DONALD E. GANN
In Propria Persona

Appellant,

v.

SAN JOSE CITY COUNCIL
a Municipal Corporation
and PETER G. STONE, Judge

Appellees.

ON APPPEAL FROM SUPERIOR COURT
COUNTY OF SANTA CLARA, CALIFORNIA

MOTION TO LEAVE TO PROCEED ON APPEAL

Donald E. Gann
In Propria Persona
459 No. Second St.
San Jose, Calif. 95112
(408) 297-7349

DONALD E. GANN, appellant in the above entitled case, appearing In Propria Persona, respectfully moves the Court for an Order allowing him to proceed in the above entitled case, and to present this appeal in the Supreme Court of the United States and in support of this motion. Motion is based upon USC 1343.3 Civil Rights and Elective Franchise, and made pursuant to Rule 10 (3).

The object of this motion is to enable the appellant to prosecute this order from the denial and order of the Superior Court, County of Santa Clara, California on February 17, 1984.

Date May 16, 1984.

/s/ Donald E. Gann
DONALD E. GANN, In Propria Persona.

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED

I, DONALD E. GANN, being first duly sworn, depose and say that I am the Appellant in the above-entitled case; tha in support of my motion, I believe I am entitled to redress; and the issues which I desire to present on appeal are the following:

That this motion seeks a writ of certiorari as provided by Title 28 USC Section 2101(c) seeking relief is a proper remedy and the issue ongoing and unresolved at the time the suit was filed.

Affiant states that he is entitled to redress, along with every other elector in the City of San Jose because of the

ruling by Superior Court Judge, Peter Stone that denied us the right to vote on a recently passed Business Tax ordinance by the City Council of San Jose.

Affiant states that his voting right was abridged and is contrary to the Voting Rights Act of 1965 that states city election are protected under this federal law.

Pursuant to provision, Section 1983 of the Civil Rights Act 42 U.S. Code affiant states that he is not required to exhaust state administrative remedies going into federal court.

Under federal law in this instant case, it is not necessary to plead a claim for damages and it is not required to plead diversity of citizenship.

Affiant states that under 42 USC Section 1973 provides that no person acting under color of law may refuse to permit him or any other elector in this city from voting on an issue that is state constitutionally guaranteed.

Affiant states private parties are proper defendants as in this case being presented. State action is also involved here.

Affiant states that he is a registered voter in said city and county and as such has voted in many elections in past years.

Affiant states that this Court has jurisdiction in this matter because, voting denials are and can be adjudicated by this Supreme Court.

Affiant was denied his, and other electors in this city, their right to vote on this "special" tax at an election. This ruling by Judge Stone sets a precedent that never before existed in the state of California.

This affidavit is stated under penalty of perjury, should any of these statements affiant believes to be true based on his knowldge and belief, are found to be otherwise.
Dated May 16, 1984

DONALD E. GANN, In Propria Persona.

Subscribed and sworn to before me this 16th day of May, 1984.

Notarized by: Phil A. Coffaro

DONALD E. GANN, Appellant

VS.

CITY COUNCIL OF SAN JOSE
JUDGE PETER B. STONE, Superior Court
County of Santa Clara, California

ON APPEAL FROM THE SUPERIOR COURT,
COUNTY OF SANTA CLARA, CALIFORNIA

MOTION FOR WRIT OF CERTIORARI

DONALD E. GANN, appellant in the above-entitled case, appearing In Propria Persona, respectfully moves the Court for a Writ of Certiorari allowing him to present this appeal in the Supreme Court of the United States. Motion is made pursuant to the provision of 28 USC 2101(c) and Rule 21.

The object of this motion is to enable the appellant to prosecute this appeal from the denial and order of the Superior Court, County of Santa Clara, California, on February 17, 1984.

Date May 16, 1984

/s/ Donald E. Gann
DONALD E. GANN, In Propria Persona.

ENTRY OF APPEARANCE

Donald E. Gann appearing In Propria Persona hereby seeks an Entry of Appearance by the Court together with the appropriate filing fee required for a petition for a writ of certiorari including the original sertificate of service as required by Rule 28.5.

Date May 16, 1984

/s/ Donald E. Gann
DONALD E. GANN, In Propria Persona.

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

I, DONALD E. GANN depose and say that I am the Appellant, appearing In Propria Persona, and that on June 15, 1984, pursuant to Rule 28.5 (c), Rules of the Supreme Court, caused to have served appellees by process server, three copies of the

JURISDICTIONAL STATEMENT
and
MOTIONS and AFFIDAVIT

on counsel of appellees City Council of San Jose, and in person on Superior Courut Judge, no counsel of record available.

ROBERT LOGAN, City Attorney
City of San Jose,
151 West Mission Street
San Jose, California 95110

and

JUDGE PETER G. STONE
Superior Court
191 North First Street
San Jose, California 95113

I further certify, under penalty of perjury, that the foregoing statement is true and correct.

/s/ Donald E. Gann
DONALD E. GANN, Appellant
In Propria Persona.